IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOSIENA BROWN,

Petitioner,

v.

FINANCIAL FREEDOM SENIOR FUNDING CORPORATION, ET AL.,

Respondents.

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No. C 11-02040 JSW

ORDER GRANTING PETITIONER'S MOTION FOR REMAND

Now before the Court is Petitioner Josiena Brown's motion for remand. This motion is fully briefed and is ripe for decision. Pursuant to Civil Local Rule 7-1(b), the Court finds that this matter is appropriate for decision without oral argument and is deemed submitted. *See* N.D. Civ. L.R. 7-1(b). Accordingly, the hearing set for August 26, 2011 is HEREBY VACATED. Having carefully reviewed the parties' papers and considering their arguments and the relevant authority, and good cause appearing, the Court hereby grants Petitioner's motion.

BACKGROUND

Petitioner is the only child of decedent Edith Johnson, who died January 1, 2010, at the age of 84. (Pet. ¶ 6.) Decedent's estate is being administered in the City and County of San Francisco. (*Id.*) On June 23, 2010, Petitioner was appointed as the personal representative of the probate estate. (*Id.* ¶ 11.) On July 8, 2010, Respondent Financial Freedom Senior Funding issued a "Notice of Intent to Foreclose." (*Id.* ¶ 11 and Ex. D.) In August 2010, Petitioner commenced efforts to sell 1200 Jamestown Avenue, San Francisco (the "Property").

Acquisition recorded a notice of default with the San Francisco Recorder's Office on October 25, 2010, then recorded a notice of trustee's sale on January 27, 2011. (*Id.* ¶ 16 and Exs. F, G.) Petitioner obtained a temporary restraining order and preliminary injunction from the probate court, which dissolved the injunction upon reassignment to a probate commissioner. (*Id.* ¶ 17; Ex Parte Appl. at 10-11.)

Petitioner filed the instant petition to recover real property on April 22, 2011, and obtained another TRO in Superior Court. (Pet's RJN Ex. B.) The Superior Court issued an order to show cause why a preliminary injunction should not be granted and set the show cause hearing for May 11, 2011. Respondents removed the petition to this Court on April 26, 2011. The petition alleges causes of action for conspiracy to force foreclosure sale of the Property, conspiracy to violate and violation of Petitioner's civil rights under 42 U.S.C. §§ 1981 and 1985 due to race discrimination and elder abuse, conspiracy to violate and violation of the Fair Housing Act, 42 U.S.C. § 3604, conspiracy to violate and violation of the Unruh Civil Rights Act, Cal. Civ. Code § 51, and conspiracy to interfere and interference with Petitioner and the estate's prospective economic advantage.

Petitioner now moves to remand on the basis that this Court lacks jurisdiction to hear this matter under the probate exception.

ANALYSIS

A. Legal Standards Applicable to Removal Jurisdiction.

"[A]ny civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant ... to the district court of the United States for the district and division embracing the place where such action is pending." *Franchise Tax Board of California v. Construction Laborers Vacation Trust for Southern California*, 463 U.S. 1, 7-8 (1983) (citation omitted). *See also* 28 U.S.C. § 1441. However, federal courts are courts of limited jurisdiction. Accordingly, the burden of establishing federal jurisdiction for purposes of removal is on the party seeking removal, and the removal statute is strictly construed against removal jurisdiction. *Prize Frize Inc. v. Matrix Inc*, 167 F.3d 1261, 1265 (9th Cir. 1999); *see also Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1117 (9th Cir. 2004), *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992).

B. Petitioner's Motion.

The probate exception is a jurisdictional limitation on federal courts that "reserves to state probate courts the probate or annulment of a will and the administration of a decedent's estate; it also precludes federal courts from endeavoring to dispose of property that is in the custody of a state probate court." *Marshall v. Marshall*, 547 U.S. 293, 311-12 (2006). A federal court may, however, "exercise its jurisdiction to adjudicate rights in such property where the final judgment does not undertake to interfere with the state court's possession save to the extent that the state court is bound by the judgment to recognize the right adjudicated by the federal court." *Markham v. Allen*, 326 U.S. 490, 494 (1946); *see also Marshall*, 547 U.S. at 311 (explaining that the "interference" language in *Markman* is "a reiteration of the general principle that, when one court is exercising *in rem* jurisdiction over a *res*, a second court will not assume *in rem* jurisdiction over the same *res*"). Thus, a federal court may adjudicate rights regarding property that is the subject of a probate proceeding so long as the relief sought would not require the federal court "to assert control over property that remains under the control of the state courts." *Lefkowitz v. Bank of N.Y.*, 528 F.3d 102, 107 (2d Cir. 2007) (holding that the federal district court properly dismissed claims under the probate exception where plaintiff sought "to mask in claims for federal relief her complaints about the administration of her [parents'] estates, which have been proceeding in probate courts").

Here, the sole relief Petitioner seeks on all of her claims is enjoin Respondents from foreclosing on or selling the property located at 1200 Jamestown Avenue, San Francisco and to allow her to sell the property on behalf of the estate. This is the same property which is the subject of the probate action. In fact, Petitioner alleges that this property is the estate's only asset. (Pet. at ¶ C(1).) "It has been uniformly held in California that the foreclosure of a mortgage is, in its nature, a proceeding in rem against the mortgaged property." *Ridgway v. Salrin*, 41 Cal. App. 2d 50, 55 (1940). To grant Petitioner the relief she seeks would require the Court to assert control over property that is the subject of probate proceedings. The Supreme

Court has made clear that "when one court is exercising *in rem* jurisdiction over a *res*, a second court will not assume *in rem* jurisdiction over the same *res*." *Marshall*, 547 U.S. at 311. Therefore, the Court finds that pursuant to the probate exception, the Court is precluded from exercising jurisdiction over this matter. Accordingly, the Court grants Petitioner's motion for remand.

CONCLUSION

For the foregoing reasons, the Court GRANTS Petitioner's motion for remand. The Clerk shall remand this case to the Probate Division of the San Francisco Superior Court and close the file.

IT IS SO ORDERED.

Dated: August 8, 2011

JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE